

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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LITIGATION

This Document Relates To:

All Actions

Civil No. 18-1776 (JRT/HB)

**JOINT STATUS UPDATE AND
PROPOSED BRIEFING SCHEDULE
FOR CERTAIN DISCOVERY
DISPUTES**

Dear Judge Bowbeer:

Pursuant to the Scheduling Order (ECF No. 532), the parties have engaged in meet-and-confers regarding the Class Plaintiffs' and Defendants' requests for production (RFPs), custodians, and non-custodial data sources. While these efforts narrowed issues in dispute, the parties have been unable to reach an agreed set of custodians for all Class Plaintiffs and all Defendants, and Plaintiffs believe that the parties have reached an impasse regarding the four overarching issues outlined in the parties' July 26, 2019 Joint Update Letter (ECF No. 355).¹

Pursuant to the Scheduling Order (ECF No. 532), all Class Plaintiffs and all Defendants must serve amended responses and objections to their opponents' RFPs on November 23, 2020. Those amended responses may narrow the number of RFP disputes that the parties have been unable to resolve in meet-and-confers. Defendants' amended RFP responses also will address, for the first time, a set of RFPs the parties agreed to defer pending resolution of motions to dismiss. *See* ECF 233 at 1.²

Given this status, and for the convenience of the Court, the parties propose a staggered briefing schedule in which motions to compel related to any remaining disputes as to the Class Plaintiffs' and Defendants' custodians and as to the four overarching issues outlined in ECF No. 355 are presented in December 2020. The parties further agree to meet-and-

¹ These issues are (1) use of general objections; (2) production of complete work calendars; (3) production of complete telephone records; and (4) production of documents relating to benchmarking services other than Agri Stats. *See* ECF No. 355 at 3-4; 13-18.

² The deferred RFPs are All Plaintiffs' Request Numbers 9, 12-13, 18, 28-30, 35-39 (served November 1, 2018) and Indirect Purchaser Plaintiffs' Request Numbers 5-6 (served November 1, 2018).

confer on the Class Plaintiffs' and Defendants' amended responses and objections to RFPs and present any remaining RFP-related motions in January 2021.

While the parties agree on this general structure, they do not agree on the briefing format. Class Plaintiffs believe that joint letter briefs are appropriate in the circumstances, particularly because many of the issues to be raised have already been briefed (*see* ECF No. 355). In Plaintiffs' view, the efficiency of this approach adheres to this Court's Practice Pointers, which encourage informal resolution of non-dispositive motions. *See* Practice Pointers and Preferences at 5.

Defendants believe formal briefing is appropriate, as the issues have not been fully briefed, Defendants do not believe an impasse has been reached yet on any of the "four overarching issues" (and on two of those four issues, Defendants do not even know exactly what the dispute is or which Defendants are involved), disputes regarding custodians are new, and the parties have not ascertained the scope of potential disputes regarding the remaining RFPs. Defendants also object to the Class Plaintiffs' apparent attempt to force discovery disputes into the informal process, which Defendants understand to be a process that can be used only with the consent of all parties.

The parties' competing proposals on briefing format, and all associated deadlines, are set forth in the attached Proposed Orders, which the parties respectfully submit for the Court's consideration.

Dated: November 23, 2020

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